

§ 371.1 Scope, purpose and applicability.

(a) *Scope.* This part applies to insured depository institutions that are in a troubled condition as defined in § 371.2(f).

(b) *Purpose.* This part establishes recordkeeping requirements with respect to qualified financial contracts for insured depository institutions that are in a troubled condition.

(c) *Applicability.* An insured depository institution shall comply with this part within 60 days after written notification by the institution's appropriate Federal banking agency or the FDIC that it is in a troubled condition under § 371.2(f). The FDIC may, at its discretion, grant one or more extensions of time for compliance with this part. No single extension shall be for a period of more than 30 days. An insured depository institution may request an extension of time by submitting a written request to the FDIC at least 15 days prior to the deadline for its compliance with the requirements of this part. The written request for an extension must contain a statement of the reasons why the institution cannot comply by the deadline for compliance.

§ 371.2 Definitions.

For purposes of this part:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) *Appropriate Federal banking agency* means the agency or agencies designated under 12 U.S.C. 1813(q).

(c) *Insured depository institution* means any bank or savings association, as defined in 12 U.S.C. 1813, the deposits of which are insured by the FDIC.

(d) *Position* means the rights and obligations of a person or entity as a party to an individual transaction under a QFC.

(e) *Qualified financial contracts* (QFCs) mean those qualified financial contracts that are defined in 12 U.S.C. 1821(e)(8)(D) to include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements and any other contract determined by the FDIC to be a QFC as defined in that section.

(f) *Troubled condition* means for purposes of this part, any insured depository institution that:

(1) Has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 3 (only for insured depository institutions with total consolidated assets of ten billion dollars or greater), 4, or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating;

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(3) Is subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), that requires action to improve the financial condition of the insured depository institution or is subject to a proceeding initiated by the appropriate Federal banking agency which contemplates the issuance of an order that requires action to improve the financial condition of the insured depository institution, unless otherwise informed in writing by the appropriate Federal banking agency;

(4) Is informed in writing by the insured depository institution's appropriate Federal banking agency that it is in troubled condition for purposes of 12 U.S.C. 1831i on the basis of the institution's most recent report of condition or report of examination, or other information available to the institution's appropriate Federal banking agency; or

(5) Is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

§ 371.3 Form, availability and maintenance of records.

(a) *Form and availability.* The records required to be maintained by an insured depository institution for QFCs under this part—